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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re	:
	Chapter 11
SEARS HOLDINGS CORPORATION, et al.,	:
	Case No. 18-23538 (RDD)
Debtors.¹	:
	(Jointly Administered)
-----x	

**DEBTORS' RESPONSE AND RESERVATION
OF RIGHTS WITH RESPECT TO OBJECTIONS TO CURE AMOUNTS AND/OR
ASSUMPTION AND ASSIGNMENT OF DESIGNATABLE LEASES**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innoval Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

TO THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:

Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby file this response and reservation of rights to various objections regarding cure amounts, adequate assurance, and/or assumption and assignment of unexpired leases²:

Background

1. Beginning on October 15, 2018 and continuing thereafter, each of the Debtors commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. On October 24, 2018, the United States Trustee for Region 2 appointed an official committee of unsecured creditors. No trustee or examiner has been appointed in these chapter 11 cases.

3. The Debtors’ chapter 11 cases are being jointly administered for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

4. The Debtors and Transform Holdco LLC (the “**Buyer**”) entered into that certain asset purchase agreement, dated as of January 17, 2019 (as amended, the “**APA**”) for the sale of substantially all of the Debtors’ assets (the “**Sale Transaction**”).

5. The Debtors filed and served on applicable counterparties several notices of cure costs and potential assumption and assignment of executory contracts and unexpired leases

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Sale Order (as defined below) or the Assumption and Assignment Order (as defined below), as applicable.

in connection with the Sale Transaction (the “**Cure Notices**”) (ECF Nos. 1731, 1774, 2314, 2753, 2995, 3097, 3152, and 3330).

6. On February 8, 2019, the Bankruptcy Court entered the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith and (IV) Granting Related Relief* (ECF No. 2507) (the “**Sale Order**”). The Sale Transaction closed on February 11, 2019.

7. On April 2, 2019, the Court Entered the *Order (I) Authorizing Assumption and Assignment of Certain Executory Contracts and Leases and (II) Granting Related Relief* (the “**Assumption and Assignment Order**”) (ECF No. 3008).

8. Pursuant to the APA, the Buyer purchased the exclusive right to select, identify, and designate many of the Debtors’ leases for assumption and assignment (the “**Designation Rights**”). The Buyer’s Designation Rights initially were set to terminate on April 12, 2019 with respect to the Lease (the “**Designation Period**”). The Debtors and the Buyer agreed to an extension of the Designation Period and, on April 12, 2019, the Debtors filed the *Notice of Amendment to Asset Purchase Agreement Extending Certain Deadlines* (ECF No. 3171), which extended the Designation Period to May 3, 2019 for certain Designatable Leases.

9. Additional information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Robert A. Riecker Pursuant to Rule 1007-2 of Local Bankruptcy Rules for Southern District of New York*, sworn on October 15, 2018 (ECF No. 3).

Response and Reservation of Rights

10. Pursuant to the APA, the Sale Order, and the Assumption and Assignment Order, the Debtors and the Buyer filed several assumption and assignment notices for Designatable Leases (the “**Assignment Notices**”) and served the Assignment Notices on the applicable landlords (ECF Nos. 2854, 3017, 3023, 3034, 3057, 3068, 3211, 3214, 3290, 3297, 3298, 3299, 3329, 3331, 3369, 3395, and 3416).

11. Numerous landlords have filed objections to the Cure Notices and the Assignment Notices, and have asserted objections to proposed cure amounts, the Buyer’s adequate assurance of future performance, and/or the terms regarding assumption and assignment to the Buyer, among others (collectively, the “**Objections**”). Unresolved Objections are set to be heard on May 8, 2019.

12. Under section 2.3(g) of the APA, the Buyer is responsible for payment of all cure costs; the Buyer, is therefore, best situated to deal with cure objections. Likewise, the Buyer, not the Debtor, is in the best position to demonstrate to the respective landlords that the Buyer or its assignee can satisfy the requirements for adequate assurance of future performance. And, of course, to the extent that the Buyer wants the proposed order to include certain language, it is in the best position to resolve those requests before the Court. Consequently, the Debtors defer to the Buyer with respect to the resolution of the Objections.

13. The Debtors, therefore, do not believe there is a need to respond to the Objections and reserve their rights with respect to the Objections should assumption of the Designatable Leases and assignment to the Buyer not be approved by the Court.

Dated: May 6, 2019

New York, New York

/s/ Jacqueline Marcus
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